UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,516	09/15/2003	Regis J. Crinon	MS1-1736US	1873

22801 7590 07/24/2008
LEE & HAYES PLLC
421 W RIVERSIDE AVENUE SUITE 500
SPOKANE, WA 99201

EXAMINER	
MENDOZA, JUNIOR O	
ART UNIT	PAPER NUMBER
2623	
MAIL DATE	DELIVERY MODE
07/24/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/663,516	CRINON ET AL.	
	Examiner	Art Unit	
	JUNIOR O. MENDOZA	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 April 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16,18-34,37-52,54 and 55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-16,18 and 19* is/are allowed.

6)☒ Claim(s) *20-34, 37-49, 51, 52, 54 and 55* is/are rejected.

7)☒ Claim(s) *50* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claim 37 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 44 of copending Application No. 10/419,616. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter that is claimed is similar in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 51, 54 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 23 and 24, respectively, of copending Application No. 10/419,616. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter that is claimed is similar in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 19 and 37 - 50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter as follows. Claim 19 defines a machine-readable medium which is disclosed as a carrier wave signal; page 29 lines 21-25 and page 30 lines 1-6 of the specification. While "functional descriptive material" may be claimed as a statutory product (i.e., a "manufacture") when embodied on a tangible computer readable medium, a signal embodying that same functional descriptive material is neither a process (i.e., a series of steps per se.) nor a product (i.e., a tangible "thing") and therefore does not fall within one of the four statutory classes of § 101. Rather, "signal" is a form of energy, in the absence of any physical structure or tangible material.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claim 37** is rejected under 35 U.S.C. 102(b) as being anticipated by Fries (Patent No US 6,317,885). Hereinafter referenced as Fries.

Regarding **claim 37**, Fries discloses one or more computer-readable media having stored thereon a computer program that (Col. 5 lines 24-36; fig 3), when executed by one or more processors, causes the one or more processors to:

determine an arrangement of data files in a set of cyclically broadcast data files (Col. 8 lines 13-25; col. 22 lines 20-33 and lines 52-61; also exhibited on figure 2)

based on information received from one or more data file receivers of the set of cyclically broadcast data files (Col. 8 lines 13-25 figs 2 and 10; most requested data),

wherein the information identifies a data file that is desired by the data file receiver (Col. 8 lines 13-25 figs 2 and 10).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. **Claims 20 – 22, 25, 29 – 34, 40 and 44 – 49** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fries in view of Russell et al. (Pub No US 2002/0099818). Hereinafter, referenced as Fries and Russell, respectively.

Regarding **claim 20**, Fries discloses a system comprising: a data carousel generator cyclically transmitting a set of data files to one or more data file receivers (Col. 4 lines 17-28 figs 2 and 10);

and a carousel configuration module that modifies the set of data files based on information received from the one or more data file receivers (Col. 8 lines 13-25; col. 22 lines 20-33 and lines 52-61; also exhibited on figure 2) through a back channel (Col. 4 and 5 lines 64-67 and lines 1-6);

a carousel configuration module that modifies the set of data files based on a file transmission latency information (Col. 8 lines 13-25 figs 2 and 10);

and such that a worst case latency between successive transmissions of a particular data file is less than a maximum latency value wherein the maximum latency value is a maximum amount of time permitted (Col. 8 lines 13-25 figs 2 and 10; where the maximum latency is less than the nominal maximum latency).

However, it is noted that Fries fails to explicitly disclose that the file transmission latency is an amount of time between receiving a request for a particular file and providing a requested file and that the amount of time permitted is the time between receiving a request for a particular file and providing the requested file.

Nevertheless, in a similar field of endeavor Russell discloses that the file transmission latency is an amount of time between receiving a request for a particular file and providing a requested file (Paragraphs [0014] [0021]);

the amount of time permitted is the time between receiving a request for a particular file and providing the requested file (Paragraphs [0014] [0021]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries by specifically providing the elements mentioned above, as taught by Russell, for the purpose of calculating a more accurate latency time from the viewers point of view, enhancing the experience of the user and creating bigger satisfaction.

Regarding **claim 21**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that modifying the data files comprises adding one or more data files to the set of data files (Col. 8 lines 13-25 figs 2 and 10).

Regarding **claim 22**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that modifying the data files comprises removing one or more data files from the set of data files (Col. 22 lines 52-60).

Regarding **claim 25**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises data for rendering and image on a video display (Col. 6 lines 66-67 and col. 7 lines 1-11 also exhibited on fig 6).

Regarding **claim 29**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises data for rendering an image on a video display (Col. 7 lines 1-11 also exhibited on fig 6);

each data file includes a user selectable link to another data file in the set of data files (Col. 2 lines 23-37 also exhibited on fig 6);

and the information received from the one or more of the plurality of data file receivers is associated with selection by a user of one or more of the links (Col. 2 lines 23-37 also exhibited on fig 6).

Regarding **claim 30**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises information associated with a web page (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6).

Regarding **claim 31**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises a web page (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6).

Regarding **claim 32**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises a web page (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6);

each web page includes one or more hypertext links (Col. 2 lines 23-37 also exhibited on fig 6);

and the information received from the one or more of the plurality of data file receivers is associated with user selection of one or more hypertext links (Col. 2 lines 23-37 also exhibited on fig 6).

Regarding **claim 33**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises a web page (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6);

each web page includes one or more hypertext links (Col. 2 lines 23-37 also exhibited on fig 6);

the web pages are grouped into web page regions (Col. 6 lines 66-67 and col. 7 lines 1-11 also exhibited on fig 6);

and the information received from the one or more of the plurality of data file receivers identifies one or more of the web page regions (Col. 2 lines 23-37 also exhibited on fig 6).

Regarding **claim 34**, Fries discloses and Russell a system as recited in claim 20; moreover, Fries discloses that each data file comprises a web page (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6);

each web page includes one or more hypertext links (Col. 2 lines 23-37 also exhibited on fig 6);

the web pages are grouped into web page regions (Col. 6 lines 66-67 and col. 7 lines 1-11 also exhibited on fig 6);

and the information received from the one or more of the plurality of data file receivers identifies a web page region including a web page identified by a user selected hypertext link (Col. 2 lines 23-37 also exhibited on fig 6).

Regarding **claims 40, 44, 45, 46, 47, 48 and 49,** Fries and Russell disclose all the limitations of claims 40, 44, 45, 46, 47, 48 and 49; therefore, claims 40, 44, 45, 46, 47, 48 and 49 are rejected for the same reasons as in claims 25, 29, 30, 31, 32, 33 and 34, respectively.

7. **Claims 23, 24, 26, 28, 38, 39, 41 and 43** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fries in view of Russell further in view of Skaringer et al. (Pub No US 2003/0191815). Hereinafter, referenced as Skaringer.

Regarding **claim 23**, Fries and Russell disclose a system as recited in claim 20; moreover, Fries discloses that modifying the data files comprises at least one of adding one or more data files to the set of data files, removing one or more data files from the set of data files, and changing the order of the data files in the set of data files (Col. 8 lines 13-25; col. 22 lines 52-60; figs 2 and 10).

However, it is noted that Fries and Russell fail to explicitly disclose that the set of data files are arranged in a predetermined order.

Nevertheless, in a similar field of endeavor Skaringer discloses that the set of data files are arranged in a predetermined order (Paragraph [0007]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries and Russell by specifically providing the elements mentioned above, as taught by Skaringer, for the purpose of providing data in predetermined order which allows the data to be allocated in an organized manner in order to best suit a particular user, which may decrease the chance of an error when the content is distributed.

Regarding **claim 24**, Fries and Russell disclose a system as recited in claim 20; moreover, Fries discloses that the information received from the one or more of the plurality of data file receivers identifies one of the subsets (Col. 2 lines 23-37 also exhibited on fig 6).

However, it is noted that Fries and Russell fail to explicitly disclose that the data files are grouped into subsets.

Nevertheless, in a similar field of endeavor Skaringer discloses that the data files are grouped into subsets (Paragraph [0021]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries and Russell by specifically providing the elements mentioned above, as taught by Skaringer, for the purpose of accessing the requested files in a faster manner which allows a faster distribution on content.

Regarding **claim 26**, Fries and Russell disclose a system as recited in claim 20; moreover, Fries discloses that each data file comprises data for rendering an image on a video display (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6);

the information received from the one or more of the plurality of data file receivers identifies one of the subsets (Col. 2 lines 23-37 also exhibited on fig 6).

However, it is noted that Fries and Russell fail to explicitly disclose that the data files are grouped into subsets.

Nevertheless, in a similar field of endeavor Skaringer discloses that the data files are grouped into subsets (Paragraph [0021]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries and Russell by specifically providing the elements mentioned above, as taught by Skaringer, for the purpose of accessing the requested files in a faster manner which allows a faster distribution on content.

Regarding **claim 28**, Fries and Russell disclose a system as recited in claim 20; moreover, Fries discloses that each data file is associated with a computer executable program (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6; HTML browser);

the information received from the one or more of the plurality of data file receivers identifies one of the subsets (Col. 2 lines 23-37 also exhibited on fig 6).

However, it is noted that Fries and Russell fail to explicitly disclose that the data files are grouped into subsets.

Nevertheless, in a similar field of endeavor Skaringer discloses that the data files are grouped into subsets (Paragraph [0021]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries and Russell by specifically providing the elements mentioned above, as taught by Skaringer, for the purpose of accessing the requested files in a faster manner which allows a faster distribution on content.

Regarding **claims 38, 39, 41 and 43,** Fries, Russell and Skaringer disclose all the limitations of claims 38, 39, 41 and 43; therefore, claims 38, 39, 41 and 43 are rejected for the same reasons as in claims 23, 24, 26 and 28, respectively.

8. **Claims 27 and 42** are rejected under 35 U.S.C. 103(a) as being unpatentable over Fries in view of Russell further in view of Yamaguchi et al. (Pub No US 2002/0054071). Hereinafter, referenced as Yamaguchi.

Regarding **claim 27**, Fries and Russell disclose a system as recited in claim 20; moreover, Fries discloses that each data file comprises data for rendering an image on a video display (Col. 2 lines 23-37; col. 4 lines 17-28 also exhibited on fig 6);

and the information received from the one or more of the plurality of data file receivers identifies a data file (Col. 2 lines 23-37 also exhibited on fig 6).

However, it is noted that Fries and Russell fail to explicitly disclose that the data files are hierarchically associated and receivers identifies a position in the hierarchy.

Nevertheless, in a similar field of endeavor Yamaguchi discloses that the data files are hierarchically associated and receivers identifies a position in the hierarchy (Paragraphs [0017] [0101] fig 11; and claim 6 of the reference).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries and Russell by specifically providing the elements mentioned above, as taught by Yamaguchi, for the purpose of accessing the most commonly requested files in a faster manner which allows a faster distribution on content.

Regarding **claim 42,** Fries, Russell and Yamaguchi disclose all the limitations of claim 42; therefore, claim 42 is rejected for the same reasons as in claim 27.

9. **Claim 55** is rejected under 35 U.S.C. 103(a) as being unpatentable over Fries in view of Russell further in view of Danneels et al. (Patent No US 5,805,825). Hereinafter, referenced as Danneels.

Regarding **claim 55**, Fries and Russell disclose a system as recited in claim 20; moreover, Fries discloses that the carousel configuration module monitors and aggregates requests for the data files from the data file receivers (Col. 4 lines 17-28 also exhibited on figure 2)

and calculates a frequency of a new data (Col. 8 lines 13-25 figs 2 and 10; col. 22 lines 52-60).

However, it is noted that Fries and Russell fail to explicitly disclose maintaining a record of the data file requests received over a pre-defined time window, inserts or removes the data files based on requests accumulated over the time window and calculates a frequency of a new data file from the relative number of requests for one data file versus another.

Nevertheless, in a similar field of endeavor Danneels discloses maintaining a record of the data file requests received over a pre-defined time window, inserts or removes the data files based on requests accumulated over the time window (Col. 5 lines 42-67; col. 6 lines 13-23 also exhibited on figures 4 and 9),

and calculating a frequency of a new data file from the relative number of requests for one data file versus another (Col. 5 lines 42-67; col. 7 lines 52-58).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fries and Russell by specifically providing the elements mentioned above, as taught by Danneels, for the purpose of providing data in predetermined order which allows the data to be allocated in an organized manner in order to best suit a particular user, which may decrease the chance of an error when the content is distributed.

10. **Claim 51** is rejected under 35 U.S.C. 103(a) as being unpatentable over Metz et al. (Patent No 5,978,855) in view of Sugimori et al (Patent Pub No 2002-135215). Hereinafter referenced as Metz and Sugimori, respectively.

Regarding **claim 51**, Metz discloses a method comprising: a data carousel generator cyclically transmitting a set of data files to one or more data file receivers (A source system [11] operates a data carousel application to distribute content to set top box [100], where a digital data stream cyclically repeats; the data stream includes video, audio, data and executable code, column 10 lines 1-9 also exhibited on fig 1)

and carousel modification means for modifying the set of data files based on information received from the one or more data file receivers (The software server [12] modifies the file for the data carousel to include the specified material in response to a request, column 46 lines 14-22).

It is noted that Metz fails to explicitly disclose that the carousel modification means further modifies the order of the set of data files broadcast from the data carousel generator based on file transmission latency information.

Nevertheless, in a similar field of endeavor Sugimori discloses that the carousel modification means further modifies the order of the set of data files broadcast from the data carousel generator based on file transmission latency information (monitoring and updating the files by altering the files to be distributed faster, see abstract).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Metz and Fries by specifically providing the elements mentioned above, as taught by Sugimori, for the purpose of allowing data files to be transmitted from the broadcaster to multiple receivers or clients simultaneously, and by updating the data carousel with frequently requested files increases the speed of the distribution of the files.

11. **Claim 52** is rejected under 35 U.S.C. 103(a) as being unpatentable over Metz in view of Sugimori further in view of Yamaguchi et al. (Pub No US 2002/0054071). Hereinafter referenced as Yamaguchi.

Regarding **claim 52**, Metz and Sugumori disclose a system as recited in claim 51; however, Metz and Sugumori fail to explicitly disclose that the carousel modification

means comprises a carousel configuration module in operable communication with the data carousel generator and the one or more data file receivers.

Nevertheless, in a similar field of endeavor Yamaguchi disclose that the carousel modification means comprises a carousel configuration module in operable communication with the data carousel generator and the one or more data file receivers (Control unit [103] and data carousel definition unit [107], paragraph [0058], [0066]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Metz and Sugumori by specifically providing the element mentioned above, as taught by Yamaguchi, for the purpose a providing an element that can keep control of the entire transmission operation, which updates the carousel only when it is need.

12. **Claim 54** is rejected under 35 U.S.C. 103(a) as being unpatentable over Metz in view of Sugumori further in view of Fries.

Regarding **claim 54**, Metz and Sugumori disclose a system as recited in claim 51; however, Metz and Sugumori fail to explicitly disclose that the carousel modification means modifies the order of the set of data files broadcast from the data carousel generator such that a worst case latency between successive transmissions of a particular data file is less than a maximum latency value.

Nevertheless, in a similar field of endeavor Fries disclose that the carousel modification means modifies the order of the set of data files broadcast from the data carousel generator such that a worst case latency between successive transmissions of a particular data file is less than a maximum latency value (Frequently accessed pages may be placed in the carousel [50] more than once at the spaced apart locations to reduce the latency for that page by increasing its frequency, column 8 lines 13-25).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Metz and Sugumori by specifically providing the elements mentioned above, as taught by Fries, for the purpose of allowing data files to be transmitted from the broadcaster to multiple receivers or clients simultaneously, and by updating the data carousel with frequently requested files increases the speed of the distribution of the files.

Response to Arguments

13. Applicant's arguments filed 04/28/2008 have been fully considered but they are not persuasive.

Regarding **claim 51**, applicant claims that office action failed to present evidence of a system that "modifies the order of the set of data files broadcast from the data carousel generator based on file transmission latency information".

However, the examiner maintains that Sugimori discloses renewing and changing the data contained in a carousel in a short time, which as a result affects the time it takes (latency) for the user to obtain a file, see abstract and

paragraphs [0006] [0010]. The process of updating the carousel needs to take place within a time threshold in order to keep sending the data in a timely manner, paragraph [0054].

Allowable Subject Matter

14. Claims 1-16, 18 and 19 are allowed.

Regarding claims 1-16, 18 and 19, prior art of record fails to show or reasonably suggest that the worst case latency is calculated by a summation, for other data files in the set of data files, of a relative ratio of the data file to another data file rounded up to a next integer times a file size of the data file, the summation divided by the data transmission rate, in combination with all the other limitations presented in claim 1. Claims 2-16, 18 and 19 depend on allowable claim 1. Therefore, the dependent claims are also held allowable.

15. **Claim 50** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Regarding 50, the specific limitation of "the worst case latency is calculated by a summation, for other data files in the set of data files, of a relative ratio of the data file to another data file rounded up to a next integer times a file size of the data file, the summation divided by the data transmission rate" in the combination as claimed is neither anticipated nor made obvious over the prior art made of record.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Crinon et al. (Pub No. 2003/0002515) – Method of scheduling modules on a carousel.
- Tanaka (Patent No US 6,782,006) – Digital broadcasting apparatus which adjusts bitrates of sources data items composing addition information.
- Goodman et al. (Patent No US 6,895,595) – Module manager for interactive television system.
- Bidfikian et al. (Patent No US 6,047,317) – System and method for enabling a user to rapidly access images in cyclically transmitted image streams.
- Barbier et al. (Pub No US 2004/0205826) – Method and system for emulating an HTTP server through a broadcast carousel.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUNIOR O. MENDOZA whose telephone number is (571)270-3573. The examiner can normally be reached on Monday - Friday 9am - 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Koenig can be reached on (571)272-7296. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Junior O Mendoza
Examiner
Art Unit 2623

/J. O. M./
July 17, 2008

/Andrew Y Koenig/
Supervisory Patent Examiner, Art Unit 2623